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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 THERESA ELAINE McGRATH, ) Case No. CV 17-1977-JPR  
12 )  
13 Plaintiff, )  
14 ) MEMORANDUM DECISION AND ORDER  
15 v. ) AFFIRMING COMMISSIONER  
16 )  
17 NANCY A. BERRYHILL, Acting )  
18 Commissioner of Social )  
19 Security, )  
20 )  
21 Defendant. )  
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1   **II.   BACKGROUND**

2           Plaintiff was born in 1964. (Administrative Record ("AR")  
3 86.) She completed three years of college (AR 278) and last  
4 worked as a clerk for an airline (AR 278, 292).

5           On October 11, 2012, Plaintiff filed applications for DIB  
6 and SSI, alleging that she had been disabled since July 13, 2012,  
7 because of chronic back pain, headaches, depression, and  
8 arthritis. (AR 86-87, 98-99, 245-53.) After her applications  
9 were denied initially and on reconsideration, she requested a  
10 hearing before an Administrative Law Judge. (See AR 140, 146,  
11 152.) Her first hearing was held on January 23, 2014; she was  
12 represented by counsel and testified, as did a vocational expert.  
13 (AR 40-54.) In a written decision issued February 24, 2014, the  
14 ALJ found Plaintiff not disabled. (AR 119-28.) The Appeals  
15 Council vacated the decision and remanded for further  
16 proceedings.<sup>1</sup> (AR 134-36.) A second hearing was held before a  
17 new ALJ on June 8, 2016, at which Plaintiff, who was again  
18 represented by counsel, testified, as did a vocational expert.  
19 (AR 55-85.) On August 4, 2016, that ALJ issued a written  
20 decision finding her not disabled. (AR 20-37.)

21           Plaintiff requested review and submitted additional medical  
22 evidence to the council. (AR 15, 545-46.) On February 15, 2017,  
23

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24           <sup>1</sup> The council directed the ALJ to evaluate the opinion of a  
25 state-agency consultant; redetermine Plaintiff's RFC using  
26 specific functional limitations; resolve any inconsistency  
27 between the RFC, which "[did] not include social limitations,"  
28 and the consulting psychiatric examiner's finding of "moderate  
difficulties in social functioning"; and reassess whether  
Plaintiff could perform her past relevant work if she indeed had  
such difficulties. (AR 134-35.)

1 it denied review, finding that the additional evidence did not  
2 provide a basis for changing the ALJ's decision, and ordered that  
3 the new evidence be made part of the administrative record. (AR  
4 1-6.) This action followed.

### 5 **III. STANDARD OF REVIEW**

6 Under 42 U.S.C. § 405(g), a district court may review the  
7 Commissioner's decision to deny benefits. The ALJ's findings and  
8 decision should be upheld if they are free of legal error and  
9 supported by substantial evidence based on the record as a whole.  
10 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
11 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
12 evidence means such evidence as a reasonable person might accept  
13 as adequate to support a conclusion. Richardson, 402 U.S. at  
14 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).  
15 It is more than a scintilla but less than a preponderance.  
16 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
17 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
18 substantial evidence supports a finding, the reviewing court  
19 "must review the administrative record as a whole, weighing both  
20 the evidence that supports and the evidence that detracts from  
21 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
22 720 (9th Cir. 1998). "If the evidence can reasonably support  
23 either affirming or reversing," the reviewing court "may not  
24 substitute its judgment" for the Commissioner's. Id. at 720-21.

### 25 **IV. THE EVALUATION OF DISABILITY**

26 People are "disabled" for purposes of receiving Social  
27 Security benefits if they are unable to engage in any substantial  
28 gainful activity owing to a physical or mental impairment that is

1 expected to result in death or has lasted, or is expected to  
2 last, for a continuous period of at least 12 months. 42 U.S.C.  
3 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
4 1992).

5 A. The Five-Step Evaluation Process

6 The ALJ follows a five-step sequential evaluation process to  
7 assess whether a claimant is disabled. 20 C.F.R.  
8 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
9 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
10 step, the Commissioner must determine whether the claimant is  
11 currently engaged in substantial gainful activity; if so, the  
12 claimant is not disabled and the claim must be denied.  
13 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

14 If the claimant is not engaged in substantial gainful  
15 activity, the second step requires the Commissioner to determine  
16 whether the claimant has a "severe" impairment or combination of  
17 impairments significantly limiting her ability to do basic work  
18 activities; if not, the claimant is not disabled and her claim  
19 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

20 If the claimant has a "severe" impairment or combination of  
21 impairments, the third step requires the Commissioner to  
22 determine whether the impairment or combination of impairments  
23 meets or equals an impairment in the Listing of Impairments set  
24 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,  
25 disability is conclusively presumed. §§ 404.1520(a)(4)(iii),  
26 416.920(a)(4)(iii).

27 If the claimant's impairment or combination of impairments  
28 does not meet or equal an impairment in the Listing, the fourth

1 step requires the Commissioner to determine whether the claimant  
2 has sufficient residual functional capacity ("RFC")<sup>2</sup> to perform  
3 her past work; if so, she is not disabled and the claim must be  
4 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant  
5 has the burden of proving she is unable to perform past relevant  
6 work. Drouin, 966 F.2d at 1257. If the claimant meets that  
7 burden, a prima facie case of disability is established. Id.

8 If that happens or if the claimant has no past relevant  
9 work, the Commissioner then bears the burden of establishing that  
10 the claimant is not disabled because she can perform other  
11 substantial gainful work available in the national economy.  
12 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.  
13 That determination comprises the fifth and final step in the  
14 sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);  
15 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

16 B. The ALJ's Application of the Five-Step Process

17 At step one, the ALJ found that Plaintiff had not engaged in  
18 substantial gainful activity since July 13, 2012, the alleged  
19 disability-onset date. (AR 23.) At step two, he concluded that  
20 Plaintiff had the following severe impairments: "degenerative  
21 disease of the lumbar spine; history of degenerative shoulder  
22 disease; depression and anxiety." (Id.) At step three, he found  
23 that she did not have an impairment or combination of impairments  
24

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25 <sup>2</sup> RFC is what a claimant can do despite existing exertional  
26 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper  
27 v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The  
28 Commissioner assesses the claimant's RFC between steps three and  
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)  
(citing § 416.920(a)(4)).

1 falling under a Listing. (AR 25-26.)

2 At step four, the ALJ found that Plaintiff had the RFC to  
3 perform modified sedentary work:

4 [She] should not perform work above the shoulders; [she]  
5 is limited [to] unskilled to semiskilled work (maximum  
6 SVP 4); [she] is limited to occasional interaction with  
7 coworkers, supervisors and the general public; [she]  
8 should be allowed the use of a cane when ambulating.

9 (AR 28.)

10 Based on the VE's testimony, the ALJ concluded that  
11 Plaintiff could perform her past relevant work as a data-entry  
12 clerk. (AR 32.) Thus, he found her not disabled. (Id.)

## 13 **V. DISCUSSION**

14 Plaintiff argues that the ALJ failed to properly evaluate  
15 the opinion of psychiatrist Nina Kapitanski (J. Stip. at 3-7),  
16 properly determine her RFC and present a "complete" hypothetical  
17 to the VE (id. at 10-12), and "fully and fairly" develop the  
18 record (id. at 14-15). For the reasons discussed below, however,  
19 the ALJ did not err and remand is unwarranted.

### 20 A. The ALJ Properly Evaluated Dr. Kapitanski's Opinion and 21 Determined the RFC and VE Hypothetical

22 Plaintiff argues that the ALJ "failed to provide specific  
23 and legitimate reasons, supported by substantial evidence, for  
24 implicitly rejecting [Dr. Kapitanski's] opinion," specifically  
25 the "moderate limitations" she assessed as to Plaintiff's  
26 "completing a normal workday or workweek" and "be[ing] able to  
27 handle the usual stresses, changes, and demands of gainful  
28 employment." (Id. at 5 (citing AR 375).) She contends that

1 because the ALJ allegedly failed to consider or mention those  
2 moderate-limitation assessments, the RFC was "incomplete and  
3 unsupported by substantial evidence." (Id. at 12.) The ALJ also  
4 erred, she continues, because moderate limitations were allegedly  
5 not included in the hypothetical posed to the VE. (Id.)

6 1. Applicable law

7 A claimant's RFC is "the most [she] can still do" despite  
8 impairments and related symptoms that "may cause physical and  
9 mental limitations" affecting "what [she] can do in a work  
10 setting." §§ 404.1545(a)(1), 416.945(a)(1). A district court  
11 must affirm an ALJ's RFC assessment when the ALJ has applied the  
12 proper legal standard and substantial evidence in the record as a  
13 whole supports the decision. Bayliss v. Barnhart, 427 F.3d 1211,  
14 1217 (9th Cir. 2005). The ALJ must consider all the medical  
15 opinions "together with the rest of the relevant evidence."  
16 §§ 404.1527(b), 416.927(b);<sup>3</sup> see also §§ 404.1545(a)(1),  
17 416.945(a)(1) ("We will assess your residual functional capacity  
18 based on all the relevant evidence in your case record.").

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19  
20 <sup>3</sup> Social Security regulations regarding the evaluation of  
21 opinion evidence were amended effective March 27, 2017. When, as  
22 here, the ALJ's decision is the final decision of the  
23 Commissioner, the reviewing court generally applies the law in  
24 effect at the time of the ALJ's decision. See Lowry v. Astrue,  
25 474 F. App'x 801, 804 n.2 (2d Cir. 2012) (applying version of  
26 regulation in effect at time of ALJ's decision despite subsequent  
27 amendment); Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647  
28 (8th Cir. 2004) ("We apply the rules that were in effect at the  
time the Commissioner's decision became final."); Spencer v.  
Colvin, No. 3:15-CV-05925-DWC, 2016 WL 7046848, at \*9 n.4 (W.D.  
Wash. Dec. 1, 2016) ("42 U.S.C. § 405 does not contain any  
express authorization from Congress allowing the Commissioner to  
engage in retroactive rulemaking"). Accordingly, citations to 20  
C.F.R. §§ 404.1527 and 416.927 are to the versions in effect from  
August 24, 2012, to March 26, 2017.

1 Three types of physicians may offer opinions in Social  
2 Security cases: those who directly treated the plaintiff, those  
3 who examined but did not treat the plaintiff, and those who did  
4 neither. Lester, 81 F.3d at 830. A treating-source opinion is  
5 generally entitled to more weight than an examining one, and an  
6 examining-source opinion is generally entitled to more weight  
7 than a nonexamining one. Id.; see §§ 404.1527(c)(1),  
8 416.927(c)(1). This is so because treating physicians are  
9 employed to cure and have a greater opportunity to know and  
10 observe the claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th  
11 Cir. 1996). But "the findings of a nontreating, nonexamining  
12 physician can amount to substantial evidence, so long as other  
13 evidence in the record supports those findings." Saelee v.  
14 Chater, 94 F.3d 520, 522 (9th Cir. 1996) (per curiam) (as  
15 amended).

16 The ALJ may disregard a physician's opinion regardless of  
17 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747,  
18 751 (9th Cir. 1989); see Carmickle v. Comm'r, Soc. Sec. Admin.,  
19 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's opinion is  
20 not contradicted by other medical-opinion evidence, however, it  
21 may be rejected only for "clear and convincing" reasons.  
22 Magallanes, 881 F.2d at 751; see Carmickle, 533 F.3d at 1164  
23 (citing Lester, 81 F.3d at 830-31). When it is contradicted, the  
24 ALJ must provide only "specific and legitimate reasons" for  
25 discounting it. Carmickle, 533 F.3d at 1164 (citing Lester, 81  
26 F.3d at 830-31). The weight given a treating or examining  
27 physician's opinion, moreover, depends on whether it is  
28 consistent with the record and accompanied by adequate



1 explanation, among other things. §§ 404.1527(c)(3)-(6),  
2 416.927(c)(3)-(6). Those factors also determine the weight  
3 afforded the opinions of nonexamining physicians.  
4 §§ 404.1527(e), 416.927(e). The ALJ considers findings by state-  
5 agency medical consultants and experts as opinion evidence.  
6 §§ 404.1527(e), 416.927(e).

7 In determining an RFC, the ALJ should consider those  
8 limitations for which there is support in the record and need not  
9 take into account properly rejected evidence or subjective  
10 complaints. See Bayliss, 427 F.3d at 1217 (upholding ALJ's RFC  
11 determination because "the ALJ took into account those  
12 limitations for which there was record support that did not  
13 depend on [claimant]'s subjective complaints"); Batson v. Comm'r  
14 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not  
15 required to incorporate into RFC those findings from physician  
16 opinions that were "permissibly discounted").

17 Furthermore, "[t]he ALJ need not accept the opinion of any  
18 physician . . . if that opinion is brief, conclusory, and  
19 inadequately supported by clinical findings." Thomas v.  
20 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Batson, 359  
21 F.3d at 1195. An ALJ need not recite "magic words" to reject a  
22 physician's opinion or a portion of it; the court may draw  
23 "specific and legitimate inferences" from the ALJ's opinion.  
24 Magallanes, 881 F.2d at 755.

25 The Court must consider the ALJ's decision in the context of  
26 "the entire record as a whole," and if the "evidence is  
27 susceptible to more than one rational interpretation,' the ALJ's  
28 decision should be upheld." Ryan v. Comm'r of Soc. Sec., 528

1 F.3d 1194, 1198 (9th Cir. 2008) (citation omitted).

2 2. Relevant background

3 a. *Mental-health records*

4 Before the relevant period, in 2009 and 2010, Plaintiff  
5 received some mental-health treatment. (See, e.g., AR 378-85.)  
6 At an initial consultation in October 2009, she reported a  
7 "depressed mood" and needing help "manag[ing] the transition"  
8 after a recent move to Los Angeles. (AR 383.) During the  
9 interview, she was "talkative," made "normal eye contact," and  
10 "cried once." (Id.) Her mood was "appropriate," and she was  
11 "oriented x4." (Id.) She was assessed with an "Adjustment  
12 Disorder With Depressed Mood Chronic." (AR 385.)

13 In a "psycho-social report" completed in March 2010, after  
14 eight weeks of treatment, Plaintiff was noted as having "good  
15 interpersonal skills" and being "friendly, outgoing, cooperative  
16 and polite." (AR 379.) She was "intelligent"; "proactive about  
17 self-care for physical health, including daily exercise,  
18 stretches for her back, and a healthy diet"; "caring toward  
19 others"; and "rebuilding a network of friends" and "support,"  
20 which included "her sister and grandfather, with whom she ha[d]  
21 recently reconnected." (AR 380.) She was assessed with "Pain  
22 Disorder Associated With Both Psychological Factors and a General  
23 Medical Condition, Chronic" and a Global Assessment of  
24 Functioning score of 63, among other things.<sup>4</sup> (AR 382.) In

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26 <sup>4</sup> A GAF score of 61 to 70 indicates some mild symptoms or  
27 difficulty in social, occupational, or school functioning but  
28 generally functioning pretty well, with some meaningful  
interpersonal relationships. See Diagnostic and Statistical  
Manual of Mental Disorders 32 (revised 4th ed. 2000). The

1 August or December 2010, Plaintiff "decided to discontinue  
2 therapy." (See AR 503 (Aug. 2010), 378 (Dec. 2010).)

3 During 2011 and 2012, before the relevant period, Plaintiff  
4 was seen for low-back pain and was also occasionally noted as  
5 being "alert," "oriented," and "non[ ]tangential" and having "good  
6 insight" and "good eye contact." (AR 435 (Feb. 2011), 419 (Aug.  
7 2011), 403 (Mar. 2012).) At one point, however, she reported  
8 difficulty in her relationships and was referred to  
9 psychotherapy. (AR 422-23 (Aug. 2011).) No evidence of any such  
10 psychotherapy is contained in the record.

11 Indeed, Plaintiff apparently did not receive any mental-  
12 health treatment during the relevant period. (See AR 71-72 (ALJ  
13 noting that Plaintiff had received no treatment for depression  
14 "in this period").) At most, the record reflects that she may  
15

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16 Commissioner has declined to endorse GAF scores, Revised Medical  
17 Criteria for Evaluating Mental Disorders and Traumatic Brain  
18 Injury, 65 Fed. Reg. 50764-65 (Aug. 21, 2000) (codified at 20  
19 C.F.R. pt. 404) (GAF score "does not have a direct correlation to  
20 the severity requirements in our mental disorders listings"), and  
21 the most recent edition of the DSM "dropped" the GAF scale,  
22 citing its lack of conceptual clarity and questionable  
23 psychological measurements in practice, Diagnostic and  
24 Statistical Manual of Mental Disorders 16 (5th ed. 2012).  
25 Because GAF scores continue to be included in claimant medical  
26 records, however, the Social Security Administration has  
27 clarified that they are "medical opinion evidence under 20 C.F.R.  
28 §§ 404.1527(a)(2) and 416.927(a)(2) if they come from an  
acceptable medical source." Wellington v. Berryhill, 878 F.3d  
867, 871 n.1 (9th Cir. 2017) (citing Richard C. Ruskell, Social  
Security Disability Claims Handbook § 2:15 n.40 (2017)). As with  
other medical-opinion evidence, the reliability of a GAF score  
depends on whether it is "consistent with the other evidence, the  
rater's familiarity with the claimant, and the credentials of the  
rater"; GAF scores "should not be considered in isolation."  
Ruskell, supra, § 2:15 n.40 (citing internal Social Security  
Administrative Message number 13066, which became effective July  
22, 2013, and was revised on Oct. 14, 2014).

1 have had a diagnosis for "depression" between November 2012 and  
2 July 2014 (see AR 528-31 (documents describing Plaintiff as  
3 "temporarily unemployable" because of "depression" and "[low back  
4 pain]")), and in a March 2015 "Physical Health Assessment for  
5 General Relief" from the state, she was noted as taking narcotic  
6 pain medication that "prevent[ed] clear thinking," "impair[ed]  
7 judgment," and caused "lack of mental acuity" (AR 532-33). On a  
8 few occasions when she was seen for low-back pain and her mental  
9 status was observed, she was described as "alert," "oriented,"  
10 "active," and "cooperative" and had a "normal" mood or affect and  
11 "good" eye contact. (AR 392 (Dec. 2012), 535 (May 2014).)

12 In March 2013, Plaintiff received a "complete psychiatric  
13 evaluation" from consulting psychiatrist Kapitanski. (AR 372-  
14 76.) At the time, no medical records were "available for review"  
15 (AR 372), Plaintiff was "not receiving mental health services"  
16 (AR 375), and she "ha[d] been off her antidepressants for one  
17 year due to financial reasons" (id.). Plaintiff reported having  
18 "decreased level[s] of energy, appetite and interests" and  
19 "decreased concentration." (AR 372-73). She was also "tearful  
20 and distraught" during the interview and presented with symptoms  
21 that Dr. Kapitanski found to "meet the criteria for major  
22 depressive disorder." (AR 375.) Dr. Kapitanski also found  
23 Plaintiff to be "engaged and cooperative during the evaluation."  
24 (AR 372.) Plaintiff reported that she would "text friends" and  
25 "like[d] spending time with them." (AR 372-73.) She  
26 "support[ed] herself" with "General Relief" and "baby sitting."  
27 (AR 373. But see AR 48 (Plaintiff testifying nine months later,  
28 at Jan. 2014 hearing, that she hadn't babysat "since about 2010

1 maybe"), 58 (Plaintiff testifying at June 2016 hearing that "it  
2 was before 2010 that [she] was babysitting").) And because she  
3 was homeless, she "sometimes stay[ed] with her friends." (AR  
4 374; see also AR 319-28 (one of those friends describing  
5 Plaintiff in third-party function report as "pretty self-  
6 sufficient").) She had "adequate self-care skills of dressing,  
7 bathing, eating, toileting, and [taking] safety precautions"; she  
8 ran errands, shopped, and sometimes cooked; she didn't do  
9 household chores; she managed her own money; and her relationship  
10 with her mother was "good," while her relationships with her  
11 brother and sister were "strained." (AR 374.)

12 On examination, she was "alert and oriented to person,  
13 place, time, and situation." (Id.) She could "register 3 out of  
14 3 items at 0 minutes, 2 out of 3 items at 5 minutes, and 3 out of  
15 3 items with help." (Id.) She could do "serial sevens  
16 subtraction," spell the word "world" forward and backward,  
17 identify similarities between abstract things, analyze the  
18 meaning of simple proverbs, name current and past presidents,  
19 identify the capital of California, and respond appropriately to  
20 "imaginary situations requiring social judgment and knowledge of  
21 the norms." (AR 374-75.)

22 Dr. Kapitanski assessed Plaintiff with major depressive  
23 disorder. (AR 375.) She specifically found Plaintiff to have  
24 "no difficulty" or limitation with maintaining social  
25 functioning, performing work activities on a consistent basis  
26 without special or additional supervision, performing simple and  
27 repetitive tasks, accepting instructions from supervisors, and  
28 interacting with coworkers or the public; "mild" difficulty or

1 limitation with concentration, persistence, pace, short-term  
2 recall, maintaining composure and even temperament, focusing and  
3 maintaining attention, and performing detailed and complex tasks;  
4 and "moderate" difficulty or limitation "completing a normal  
5 workday or work week due to her mental condition" and "be[ing]  
6 able to handle the usual stresses, changes and demands of gainful  
7 employment." (Id.) Dr. Kapitanski found Plaintiff  
8 "intellectually and psychologically capable of performing  
9 activities of daily living." (Id.) She also opined that "[h]er  
10 prognosis would improve with mental health services." (Id.  
11 (stating that "[i]f claimant was to have treatment the above  
12 [limitations] would significantly improve"); see also AR 376  
13 (noting again that "claimant's prognosis [was] poor but would  
14 improve with mental health treatment or services").)

15 Plaintiff's medical records were reviewed in April 2013 by  
16 state-agency consulting examiner L. O. Mallare. (AR 93-95, 105-  
17 07.) Dr. Mallare found Plaintiff "[m]oderately limited" in her  
18 ability to understand and remember detailed instructions, carry  
19 out detailed instructions, maintain attention and concentration  
20 for extended periods, complete a normal workday and workweek  
21 without interruptions from psychologically based symptoms, and  
22 perform at a consistent pace without an unreasonable number and  
23 length of rest periods. (AR 94, 106.) She was otherwise "[n]ot  
24 significantly limited" in "understanding and memory" and  
25 "sustained concentration and persistence" and was able to  
26 "understand and remember simple work related tasks," "perform  
27 sustained [simple and repetitive tasks]," and "adapt to minimal  
28 changes in a routine workplace." (AR 94-95, 106-07.)

1                   b.    *Plaintiff's statements*

2           In February 2013, Plaintiff completed an adult function  
3 report, noting in part that she had "problems with concentration  
4 [and] memory." (AR 306.) She reported "exercis[ing] a little,"  
5 "maybe twice a week" (AR 307); cooking, preparing meals "several  
6 days at a time," doing "laundry," and going "grocery shopping" in  
7 stores a couple times a week (AR 308-09); going outside to run  
8 errands, attend doctor's appointments, pick up mail from her  
9 mother's house, and "sometimes visit a friend" (AR 309); paying  
10 bills and counting change (*id.*); and spending time with others  
11 and "enjoy[ing] friends" through her phone or Facebook a "few  
12 times a week" (AR 310). She indicated that she did not "have any  
13 problems getting along with family, friends, neighbors, or  
14 others" (AR 311) and that she got along "fine" with authority  
15 figures (AR 312).

16           At her June 2016 hearing, Plaintiff reported that because of  
17 her pain she "c[ouldn't] handle stress at all," "c[ouldn't]  
18 focus," and "c[ouldn't] . . . concentrate." (AR 61.) She  
19 testified that her pain medicine made her "[f]orgetful[]." (AR  
20 60; see also AR 314 (noting in function report that Percocet<sup>5</sup>  
21 caused her to not "think straight," made it "hard to focus [and]  
22 understand," and brought on "bad memory").) And she stated that  
23 she was currently living "with friends" but did not have a place  
24 of her own. (AR 62.) Before the hearing ended, she was advised  
25

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26  
27           <sup>5</sup> Percocet is an oxycodone-acetaminophen product used to  
28 relieve moderate to severe pain. See Percocet, WebMD,  
<https://www.webmd.com/drugs/2/drug-7277/percocet-oral/details>  
(last visited May 4, 2018).

1 to "pursue" an upcoming psychiatric appointment. (AR 84.) She  
2 responded, "I know that, but the thing is, it's my physicality  
3 [that's] more my problem." (Id.)

### 4 3. Analysis

5 Although Plaintiff takes issue with the ALJ's "rejection" of  
6 Dr. Kapitanski's moderate-limitation assessments (J. Stip. at 3-  
7 7), it doesn't appear that he rejected those limitations at all.  
8 The ALJ gave "significant though partial weight" to Dr.  
9 Kapitanski's opinion, rejecting it only if and "to the extent" it  
10 suggested that Plaintiff "could not maintain fulltime work." (AR  
11 31.) At step three, the ALJ specifically considered Dr.  
12 Kapitanski's findings and determined that Plaintiff was  
13 "moderate[ly]" limited in social functioning and maintaining  
14 concentration, persistence, and pace. (See AR 26-27.) He  
15 attributed the "moderate" limitation in social functioning to  
16 evidence that "engaging in unrestricted interaction with others  
17 in a work setting might be too stressful" for Plaintiff given her  
18 "signs of depression and anxiety/PTSD" (AR 26), mirroring Dr.  
19 Kapitanski's finding that Plaintiff had moderate difficulty  
20 "completing a normal workday or work week due to her mental  
21 condition" (AR 375). And he attributed the "moderate" limitation  
22 in concentration, persistence, and pace to Plaintiff's "lowered  
23 stress tolerance and perhaps the effects of physical pain or  
24 medication use" (AR 27), reflecting Dr. Kapitanski's finding that  
25 Plaintiff had moderate difficulty "be[ing] able to handle the  
26 usual stresses, changes and demands of gainful employment" (AR  
27 375).

28 Such findings were supported by substantial evidence. As



1 the ALJ explained, Plaintiff was "clearly capable of being in  
2 public independently" and "interacting appropriately with others  
3 when necessary" (AR 26 (referencing her appropriate interactions  
4 with treating and examining medical sources, her "normal[]"  
5 communication at hearing, and her "good" relationships with  
6 friends and family)), and she "exhibited no serious cognitive  
7 problems during Dr. Kapitanski's examination" or with any  
8 treating source (AR 27; see, e.g., AR 374-75 (successful  
9 completion of mental-status exam), 379-80 (psychosocial report  
10 finding Plaintiff "intelligent," "friendly," "outgoing,"  
11 "cooperative," and "polite")). Still, the ALJ found, she  
12 "experienced anxiety and depression at times," which "could  
13 reasonably be expected to interfere with her ability to interact  
14 with others in a work setting at least on an infrequent basis"  
15 (AR 27) and "might prevent her from performing more complex tasks  
16 (which are definitely more stressful)" (AR 31; see, e.g., AR 375  
17 (Dr. Kapitanski assessing Plaintiff with "Major Depressive  
18 Disorder" and GAF score of 57), 382 (psychologist assessing  
19 Plaintiff with "Pain Disorder Associated With . . . Psychological  
20 Factors" and GAF score of 63)).

21 In formulating the RFC, moreover, the ALJ limited Plaintiff  
22 to "occasional interaction with coworkers, supervisors and the  
23 general public" and "limited unskilled to semiskilled work  
24 (maximum SVP 4)," which he found would not "present serious work  
25 stress" or "require excessive stressful changes in routine  
26 necessarily." (AR 28, 31.) This RFC determination properly  
27 tracked Dr. Kapitanski's stress-related limitations. See  
28 Ferguson v. Berryhill, No. 5:17-cv-00161-KES, 2017 WL 5054690,

1 at \*3-4 (C.D. Cal. Nov. 1, 2017) (finding that ALJ "reasonably"  
2 determined plaintiff's RFC limiting him to "non-public, unskilled  
3 or semiskilled work," "mitigat[ing] against the stress likely to  
4 aggravate [his] depression and cause absenteeism"); see also  
5 Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173-74 (9th Cir.  
6 2008) (finding that ALJ did not err when he incorporated moderate  
7 mental limitations into RFC by restricting plaintiff to "simple,  
8 routine, repetitive . . . work, requiring no interaction with the  
9 public"); Hughes v. Colvin, 599 F. App'x 765, 766 (9th Cir. 2015)  
10 (holding potential error in assessing medical opinion harmless  
11 when ALJ's RFC took into account plaintiff's "moderate  
12 difficulties in social functioning" by restricting her to "job[s]  
13 where she could work independently with no more than occasional  
14 public interaction"); Withrow v. Colvin, 672 F. App'x 748, 749  
15 (9th Cir. 2017) ("[C]laimants with moderate mental limitations  
16 are capable of doing simple unskilled work.").

17 Further, the ALJ's RFC determination was supported by the  
18 January 23, 2014 hearing hypothetical, in which the testifying VE  
19 considered someone with "moderate limitation completing a normal  
20 workday or work week due to her mental impairment" and "moderate  
21 difficulty to be able to handle the usual stress changes and  
22 demands of gainful employment" – the same moderate limitations  
23 opined by Dr. Kapitanski – and found that such a person could  
24 perform Plaintiff's past work. (AR 52); see Holstine v. Colvin,  
25 No. C14-5822 BHS, 2015 WL 4920106, at \*7 (W.D. Wash. Aug. 18,  
26 2015) (affirming ALJ when hypothetical to VE included "marked  
27 limitations in . . . ability to interact with supervisors and  
28 moderate limitations in . . . ability to interact with co-

workers" and VE found jobs still available, rendering potential ALJ error "harmless"). Accordingly, Plaintiff's argument that the ALJ rejected Dr. Kapitanski's moderate limitations does not appear to be supported by the record.

To the extent the ALJ did reject Dr. Kapitanski's moderate assessments, however, he did not err for the reasons discussed below. As Plaintiff apparently concedes (see J. Stip. at 5), the ALJ was required to provide only a "specific and legitimate reason" to do so, see Carmickle, 533 F.3d at 1164. He provided two such reasons: the moderate limitations Dr. Kapitanski assessed were "not necessarily consistent with the evidence," specifically Plaintiff's daily activities and mental-health record, and were "vague." (AR 31.)

a. *Inconsistency with the Evidence*

i. *Daily activities*

The ALJ explained that Plaintiff was still "able to maintain her usual routine without difficulty[] and see to her own needs generally and without assistance." (Id.) This was a specific and legitimate reason for discounting Dr. Kapitanski's "moderate" assessments. See Taylor v. Colvin, 667 F. App'x 256, 256-57 (9th Cir. 2016) (recognizing inconsistency with "daily activities" as "specific and legitimate reason[]" for discounting examining physician's opinion); see also Coaty v. Colvin, 673 F. App'x 787, 787-88 (9th Cir.) (affirming ALJ's adverse determination of treating physician's medical opinion because it was "speculative and inconsistent" with activities of daily living), cert. denied sub nom. Coaty v. Berryhill, 137 S. Ct. 2309 (2017); Lunn v. Astrue, 300 F. App'x 524, 525 (9th Cir. 2008) (affirming ALJ's

1 rejection of treating physician's opinion that was "contrary to  
2 [plaintiff's] reports of her daily activities").

3 Dr. Kapitanski herself noted many of the activities  
4 Plaintiff reported engaging in: she baby-sat, texted and enjoyed  
5 spending time with friends, had "adequate self-care skills," ran  
6 errands, shopped, cooked, and managed her own money. (AR 372-  
7 74.) Her adult function report further indicated that she  
8 "exercis[ed] a little," cooked, did laundry, went grocery  
9 shopping in stores, ran errands, attended doctor's appointments,  
10 paid bills, and visited and spent time with friends through her  
11 phone or Facebook. (AR 307-10.) She could go out alone (AR 309)  
12 and did not need help, reminders, or encouragement to take care  
13 of herself, her chores, or her medication (AR 307-08, 310).

14 Moreover, at her hearing, Plaintiff testified that her  
15 physical health – rather than mental health – was "more [her]  
16 problem." (AR 84.) Her friend admitted that Plaintiff was  
17 "pretty self-sufficient" (AR 319-28), and Dr. Kapitanski too  
18 found that she was "intellectually and psychologically capable of  
19 performing activities of daily living" (AR 375).

20 Together, Plaintiff's demonstrated daily activity and  
21 ability to mentally function undermined the "moderate"  
22 limitations Dr. Kapitanski assessed as to completing a normal  
23 workday or workweek and handling the "usual stresses, changes,  
24 and demands" of gainful employment. See McDonald v. Berryhill,  
25 No. 1:16-cv-01477-SKO, 2018 WL 1142192, at \*11-13 (E.D. Cal. Mar.  
26 2, 2018) (finding that doctor's opinion that plaintiff "was not  
27 capable of maintaining regular employment . . . [or] handl[ing]  
28 even low stress" work because of mental-health limitations was

properly discounted because it conflicted with fact that he "performed yard work, regularly grocery shopped, attended church, attended his children's school activities when possible, sometimes drove, sometimes walked, sometimes exercised at the gym, used the computer, watched television, and read books"); Belmontez v. Colvin, No. ED CV 14-1590-PLA, 2015 WL 2063945, at \*4-5 & n.5 (C.D. Cal. May 4, 2015) (affirming ALJ's finding that plaintiff's "impaired" memory, social skills, concentration, and motivation, among other treating-source assessments, were inconsistent with his daily activities, which included "walking his dog, visiting friends and family, reading, listening to music, maintaining his personal care, preparing his meals, cleaning, doing laundry, riding in a car, going out alone, shopping for clothes and other items, and managing his own finances"). Thus, substantial evidence supports any discounting by the ALJ of Dr. Kapitanski's moderate-limitation assessments based on inconsistency with Plaintiff's daily activities.

ii. *Objective medical evidence*

Inconsistency with the objective medical evidence is a specific and legitimate reason for discounting a physician's opinion. See Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ here found Dr. Kapitanski's "moderate" limitations inconsistent with the medical evidence to the extent they "suggest[ed] that [Plaintiff] could not maintain fulltime work as described." (AR 31.) Indeed, in the immediately preceding paragraph, the ALJ explained that Plaintiff "displayed no objective signs of cognitive deficits under clinical examination," as in "Dr. Kapitanski's independent examination

1 report" and other treatment records "not[ing] no memory or  
2 cognitive deficits, at least when her mental state was observed  
3 during the relevant period." (AR 30.) Substantial evidence  
4 supports the ALJ's reasoning.

5 For example, Dr. Kapitanski's psychiatric-examination  
6 findings were unremarkable. (See AR 374); Larkins v. Colvin, 674  
7 F. App'x 632, 633 (9th Cir. 2017) (ALJ properly rejected  
8 physician's opinion that was "inconsistent . . . with his own  
9 findings"); Hernandez v. Berryhill, 707 F. App'x 456, 457-58 (9th  
10 Cir. 2017) (inconsistency with "own treatment notes" is specific  
11 and legitimate reason for discounting physician's opinion).  
12 Plaintiff was "alert and oriented" and "engaged and cooperative"  
13 and could successfully complete each of the cognitive tests  
14 administered. (AR 372, 374-75 (registering three out of three  
15 items, doing "serial sevens subtraction," spelling words backward  
16 and forward, identifying similarities between abstract things,  
17 analyzing meaning of proverbs, recalling presidents and state  
18 capitals, and responding to imaginary social situations).) She  
19 had "adequate self-care skills" and the ability to carry out her  
20 daily activities independently, and Dr. Kapitanski concluded that  
21 she was "capable of performing activities of daily living"  
22 without any noted difficulty or limitation. (AR 374-75.) She  
23 also opined that Plaintiff's condition would "significantly  
24 improve" with mental-health treatment.<sup>6</sup> (AR 375-76.) Despite

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25  
26 <sup>6</sup> Plaintiff testified that she did not receive mental-health  
27 treatment during the relevant period because she was "having a  
28 hard time with everything else in [her] life" and "didn't have  
any money." (AR 64.) Although lack of insurance is a valid  
reason for limited treatment, see Smolen, 80 F.3d at 1284, that

1 such observations, Dr. Kapitanski found that Plaintiff was  
2 "moderate[ly]" limited in her ability to complete a normal  
3 workday or work week and handle the "usual stresses, changes and  
4 demands of gainful employment." (AR 375.) The doctor provided  
5 no explanation for these more severe assessments. See Thomas,  
6 278 F.3d at 957 ("The ALJ need not accept the opinion of any  
7 physician . . . if that opinion is brief, conclusory, and  
8 inadequately supported by clinical findings."); Von Orsdol v.  
9 Colvin, 671 F. App'x 410, 410 (9th Cir. 2016) (physician's  
10 opinion properly discounted when it was "unexplained and  
11 unsupported by evidence").

12 Plaintiff argues that Dr. Kapitanski's opinion was  
13 consistent with state-agency consultant Mallare's opinion,  
14 specifically the moderate limitations he assessed. (J. Stip. at  
15 5-6.) But the ALJ rejected those limitations (AR 31-32), a  
16 finding Plaintiff has not challenged (see generally J. Stip.).<sup>7</sup>

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17  
18 does not seem to be the case here. As evidenced in the record,  
19 Plaintiff was more than capable of affording treatment for her  
20 physical health during the relevant period (see, e.g., AR 389-  
21 402, 535-40, 543-44), so it is unclear that any purported lack of  
22 funds or insurance prevented her from obtaining psychiatric  
23 treatment. Moreover, she was able to and did seek out such  
24 services previously on her own. (See, e.g., AR 378-85.) Indeed,  
25 at the time of the hearing she had scheduled an appointment with  
26 a psychiatrist. (AR 64, 84.) Thus, her failure to get mental-  
27 health treatment during the relevant period seems to stem from  
28 her physical-health issues predominating over her mental ones, as  
she herself stated (AR 84), suggesting that any lack of treatment  
was "more a function of the fact that she did not need it," see  
Judge v. Astrue, No. CV 09-4743-PJW, 2010 WL 3245813, at \*4 (C.D.  
Cal. Aug. 16, 2010).

7 The ALJ also rejected the March 2015 opinion suggesting  
that Plaintiff's cognitive ability was impaired by her use of  
narcotic pain medication (AR 30; see also AR 532-33), and  
Plaintiff has not challenged that assessment either or even

1 Indeed, the ALJ properly discounted Dr. Mallare's opinion for the  
2 same reason he discounted Dr. Kapitanski's: it was inconsistent  
3 with the medical record, particularly given that Dr. Mallare  
4 assessed even more numerous moderate limitations than Dr.  
5 Kapitanski and yet Plaintiff "displayed no serious cognitive  
6 deficits under examination at any time." (AR 31-32); see Thomas,  
7 278 F.3d at 957.

8 As explained by the ALJ, although the record contains no  
9 treatment notes "regarding [Plaintiff's] mental functioning"  
10 during the relevant period, the record does reflect normal  
11 cognitive function at times "when her mental state was observed"  
12 on physical examination. (See AR 30-31; see also AR 392 (noting  
13 that Plaintiff was "oriented to time, place, and person"; had  
14 "normal mood and affect"; and was "active and alert"), 535  
15 ("alert, oriented, cognitive function intact, cooperative with  
16 eye exam, good eye contact").) Such evidence was consistent with  
17 findings predating the relevant period, when Plaintiff last  
18 received treatment for depression. (See AR 383-84 (noting that  
19 Plaintiff was "talkative" and "oriented x4" and had "normal eye  
20 contact" and "appropriate" mood), 379-80 (noting that Plaintiff  
21 had "good interpersonal skills" and was "friendly, outgoing,  
22 cooperative[, ] polite," "intelligent," "proactive about self-  
23 care," and "caring toward others").) Such evidence was also  
24 consistent with Plaintiff's own testimony that her physical-  
25 health symptoms were "more [a] problem" than her alleged mental  
26 impairments. (AR 84.) Thus, "given her benign clinical  
27 \_\_\_\_\_  
28 raised that opinion as affirmative evidence of her alleged  
mental-health issues.



1 presentation" (AR 30-31), the ALJ properly discounted Dr.  
2 Kapitanski's moderate limitations as inconsistent with the  
3 medical evidence. See Smith v. Berryhill, No. 6:16-cv-01297-MC,  
4 2018 WL 468281, at \*3 (D. Or. Jan. 18, 2018) (finding it  
5 "reasonable for the ALJ to interpret the medical record as  
6 inconsistent with [doctor's] opinion" given findings throughout  
7 record of plaintiff's "normal mental status" and "mild to  
8 moderate" impairments); Favale v. Astrue, No. 09-CV-2513 WQH  
9 (WMc), 2010 WL 3464820, at \*4 (S.D. Cal. July 14, 2010)  
10 (affirming rejection of mental-health opinion that was  
11 contradicted by "objective medical evidence," including findings  
12 that plaintiff was "alert[] and fully oriented with average  
13 intelligence and a normal affect," had "fair insight and  
14 judgment," and demonstrated "behavior within normal limits"),  
15 accepted by 2010 WL 3464793 (S.D. Cal. Aug. 30, 2010).

16 c. *Vagueness*

17 An ALJ may also properly reject limitations that are "too  
18 vague to be useful." King v. Comm'r of Soc. Sec. Admin., 475 F.  
19 App'x 209, 210 (9th Cir. 2012). Here, the ALJ found vague Dr.  
20 Kapitanski's use of the term "moderate." (AR 31 (stating that  
21 "'moderate' is a somewhat vague term").) Indeed, the "moderate"  
22 limitations she assessed seemed contradicted by Plaintiff's noted  
23 daily activities and her "benign" examination findings, as  
24 already discussed. And the doctor failed to clearly explain the  
25 basis for her moderate-limitation conclusions or what meaning she  
26 intended "moderate" to convey.

27 But Dr. Kapitanski, as a consultative examiner, may have  
28 used the term in the sense adopted by the Social Security

1 Administration, in which "moderate" signifies "more than a slight  
2 limitation in [an] area, but the individual can still function  
3 satisfactorily." See Ferguson, 2017 WL 5054690, at \*3 (citing  
4 SSA Form HA-1152-U3); see also Cantu v. Colvin, No. 5:13-CV-  
5 01621-RMW, 2015 WL 1062101, at \*14 (N.D. Cal. Mar. 10, 2015)  
6 (same). Assuming that definition applied, the ALJ still  
7 reasonably rejected her use of the term to the extent it  
8 suggested Plaintiff "could not maintain fulltime work," as  
9 discussed above, and hence conflicted with the SSA definition.  
10 (AR 31.)

11 In any event, as also explained above, the ALJ properly  
12 accounted for the unrejected portions of Dr. Kapitanski's  
13 "moderate" assessments by formulating an RFC limiting Plaintiff  
14 to "unskilled-semiskilled work with limited social contact,"  
15 which, as he explained, "would not present serious work stress or  
16 require excessive stressful changes in routine necessarily." (AR  
17 31); see Ferguson, 2017 WL 5054690, at \*4; see also Stubbs-  
18 Danielson, 539 F.3d at 1173-74; Hughes, 599 F. App'x at 766;  
19 Withrow, 672 F. App'x at 749.

20 Accordingly, the ALJ did not err in assessing Dr.  
21 Kapitanski's opinion, nor did he err as to the RFC or VE  
22 hypothetical. Because properly rejected medical evidence need  
23 not be incorporated into a claimant's RFC, the ALJ did not "fail"  
24 to include moderate limitations in Plaintiff's, as she alleges.  
25 See Bayliss, 427 F.3d at 1217. And because the hypothetical  
26 presented to the VE included all the limitations supported by the  
27 record, it too was proper, and the ALJ was entitled to rely on  
28 it. See Thomas, 278 F.3d at 956 (finding VE testimony reliable

1 when hypothetical posed included all claimant's functional  
2 limitations); see also Bayliss, 427 F.3d at 1218 ("A VE's  
3 recognized expertise provides the necessary foundation for his or  
4 her testimony."). Substantial evidence supports the ALJ's  
5 analysis in this regard. Thus, remand is not warranted. See  
6 Saelee, 94 F.3d at 522.

7 B. The ALJ "Fully and Fairly" Developed the Record

8 Plaintiff argues that the ALJ failed to meet his duty to  
9 "fully and fairly" develop the record. (J. Stip. at 14-15.)  
10 Specifically, because of the "limited mental health medical  
11 records in this case," she contends, the ALJ should have ordered  
12 another consultative psychiatric examination. (Id. at 14.)

13 1. Applicable law

14 An ALJ has a "duty to fully and fairly develop the record"  
15 and "assure that [a] claimant's interests are considered."  
16 Garcia v. Comm'r of Soc. Sec., 768 F.3d 925, 930 (9th Cir. 2014)  
17 (citation omitted); see also Howard ex rel. Wolff v. Barnhart,  
18 341 F.3d 2006, 1012 (9th Cir. 2003) ("In making a determination  
19 of disability, the ALJ must develop the record and interpret the  
20 medical evidence."). But it nonetheless remains the claimant's  
21 burden to produce evidence in support of her disability claim.  
22 See Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001) (as  
23 amended). Moreover, the "ALJ's duty to develop the record  
24 further is triggered only when there is ambiguous evidence or  
25 when the record is inadequate to allow for proper evaluation of  
26 the evidence." McLeod v. Astrue, 640 F.3d 881, 885 (9th Cir.  
27 2010) (as amended May 19, 2011) (citation omitted); accord  
28 Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001). An

1 ALJ has broad discretion in determining whether to order a  
2 consultative examination and may do so when "ambiguity or  
3 insufficiency in the evidence . . . must be resolved." Reed v.  
4 Massanari, 270 F.3d 838, 842 (9th Cir. 2001) (citation omitted);  
5 § 416.919a(b) ("We may purchase a consultative examination to try  
6 to resolve an inconsistency in the evidence or when the evidence  
7 as a whole is insufficient to support a determination or decision  
8 on your claim.").

## 9 2. Analysis

10 Plaintiff argues that the ALJ should have ordered an  
11 additional psychiatric examination because Dr. Kapitanski's and  
12 Dr. Mallare's opinions "were from 2013," three years before her  
13 June 2016 hearing.<sup>8</sup> (J. Stip. at 14.) That fact fails to show  
14 that the record was inadequate to properly evaluate her mental  
15 limitations, however.

16 The lack of mental-health records during that period was  
17 itself evidence of the stable nature of Plaintiff's minor mental  
18 impairments. Indeed, nothing indicates that Plaintiff's mental  
19 state changed during the three years following Dr. Kapitanski's  
20 examination or Dr. Mallare's review. Aside from depression,  
21 Plaintiff exhibited normal cognitive functioning whenever her

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22  
23 <sup>8</sup> Plaintiff's argument seems to apply primarily to her SSI  
24 application. For purposes of SSI, the relevant period began on  
25 October 11, 2012, the application date, and ended on August 4,  
26 2016, the date of the ALJ's decision. See Rounds v. Comm'r Soc.  
27 Sec. Admin., 807 F.3d 996, 1000-01 & n.1 (9th Cir. 2015) (as  
28 amended) (citing § 416.335). For purposes of DIB, however, the  
relevant period began on July 13, 2012, the alleged onset date,  
and ended on December 31, 2014, the date last insured. (See AR  
21); see also Lingenfelter, 504 F.3d at 1033. Thus, the three-  
year period applies only to the SSI application. In any event,  
Plaintiff's argument fails for the reasons discussed below.

1 mental status was noted (see, e.g., AR 392 (Dec. 2012), 535 (May  
2 2014)), mirroring the normal mental-health findings from before  
3 the relevant period (see, e.g., AR 383-84, 379-80, 403, 419,  
4 435). Even the rejected March 2015 opinion that Plaintiff's  
5 narcotic pain medication may have impaired her "mental acuity"  
6 (AR 30, 532-33) did not suggest that her mental health had  
7 deteriorated since March 2010, when she was noted as using  
8 Percocet – a narcotic pain medication – and found to be  
9 "intelligent" and "proactive about self-care" (AR 380, 382).  
10 Indeed, throughout the relevant period, records of Plaintiff's  
11 normal mental state were coupled with notes of her concurrently  
12 taking narcotic pain medication. (See AR 391-92 (Dec. 2012:  
13 while on Percocet, Plaintiff had "normal mood and affect" and was  
14 "active and alert" and "oriented to time, place, and person"),  
15 372-76 (Mar. 2013: Dr. Kapitanski noting Percocet as one of  
16 Plaintiff's "current medications" and observing her successfully  
17 complete mental-status exam), 535 (May 2014: while on oxycodone,  
18 the narcotic component of Percocet, Plaintiff was "alert,"  
19 "oriented," and "cooperative," with "cognitive function intact");  
20 see also AR 419 (Aug. 2011: while on Percocet, Plaintiff was  
21 "awake, alert, and oriented x3" and "her neurological examination  
22 . . . [was] within normal limits").)

23       Moreover, as discussed above, any adverse assessment by the  
24 ALJ of Dr. Kapitanski's opinion was proper and adequately  
25 supported by substantial evidence, none of which suggested more  
26 severe mental limitations. Thus, the record was not ambiguous or  
27 inadequate, and the ALJ had no duty to develop it further. See  
28 Meltzer v. Colvin, No. CV 13-6164 AGR, 2014 WL 2197781, at \*4

1 (C.D. Cal. May 27, 2014) (finding that ALJ did not violate duty  
2 to develop record in not ordering psychiatric consultative  
3 examination because record was neither ambiguous nor inadequate  
4 and showed that claimant's schizophrenia was stable and well  
5 controlled by medication).

6 **VI. CONCLUSION**

7 Consistent with the foregoing and under sentence four of 42  
8 U.S.C. § 405(g),<sup>9</sup> IT IS ORDERED that judgment be entered  
9 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
10 request for remand, and DISMISSING this action with prejudice.

11  
12 DATED: May 4, 2018

  
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13 JEAN ROSENBLUTH  
14 U.S. Magistrate Judge  
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25 \_\_\_\_\_  
26 <sup>9</sup> That sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."